

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW MEXICO**

**DOUGLAS H. PETERSON**, *et al.*,

Plaintiffs,

v.

Case No.1:20-cv-00898

**KATHYLEEN M. KUNKEL**, *et al.*,

Defendants.

**PLAINTIFFS' MOTION TO DISMISS WITHOUT PREJUDICE**

In light of the Court's Order dated October 2, 2020 (Doc. 29), Plaintiffs move for dismissal of their Equal Protection claim without prejudice under Fed. R. Civ. P. 41(a)(2). Public school students in grades 7-12 have not returned to public schools in the timeframe Plaintiffs initially anticipated based on information shared by the Defendants and the New Mexico Department of Public Education leading up to the 2020-2021 school year. Given this fact, and the reasoning contained in the Court's opinion dated October 2, 2020, Plaintiffs do not believe it is wise to continue to spend judicial resources, and those of the parties, pursuing these claims at this time.

However, Plaintiffs respectfully request that the dismissal of their Equal Protection claim be issued without prejudice. Should public school students in grades 7-12 return to the classroom under the proposed hybrid learning model at 50% of classroom capacity, and should Defendants not amend the Public Health Order to treat private school students equally at that time, Plaintiffs' Equal Protection claims will be ripe. Such circumstances would also permit the Court to grant appropriate relief. Plaintiffs request that the Court allow them to refile their Equal Protection claim as outlined in their Complaint at a later date should circumstances warrant it.

Plaintiffs sought approval of opposing counsel on October 12, 2020, but no response was received. Therefore, this motion is raised under Fed. R. Civ. P. 41(a)(2), which allows for the dismissal of claims without prejudice upon Plaintiffs' motion.

Regarding Plaintiffs' remaining claims based on the facts and circumstances alleged at the time they filed their Complaint, Plaintiffs do not oppose Defendants' Motion to Dismiss.

Dated: October 13, 2020

Respectfully submitted:

BUCHANAN LAW FIRM, LLC

By: /s/ Deena L. Buchanan

Deena L. Buchanan

5345 Wyoming Blvd. NE, Suite 202

Albuquerque, NM 87109

(505) 900-3559

deena@dbuchananlaw.com

*Attorney for Plaintiffs*

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record through the CM-ECF filing system this 13<sup>th</sup> day of October 2020.

/s/ Deena L. Buchanan

Deena L. Buchanan